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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,433	10/07/2003	Frederick Bruce McLean	7332	3680

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/679,433

Applicant(s)

MCLEAN, FREDERICK BRUCE

Examiner

Chapman E. Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over.

Dotson (6772998) or Enghauser (2835475) in view of Sapinski (5056283) and Laird et al (6290213).

Enghauser discloses a railing system comprising:

- A pair of supporting post 11
- Upper and lower rails 15 and 22 extending between the post
- A plurality of balusters 17 extending between the upper and lower rails and each baluster having a longitudinal axis and a curved portion. See figure 6

Dotson discloses a railing system comprising:

- A pair of supporting post 10 and 18
- Upper and lower rails 13 and 14 extending between the post
- A plurality of balusters 15 extending between the upper and lower rails and each baluster having a longitudinal axis and a curved portion. See figure 2-4 and 7
- The curved portion is curved to a degree where the leveraged force may be applied on the curved portion of the baluster to rotate the baluster about its longitudinal axis. Presumably this is done before the extension members are added which are recited as preventing the balusters from rotating.

- The balusters comprise upper and lower ends in axial alignment along the longitudinal axis of the balusters with the curved portion 52 located between the upper and lower ends

Both references lacks the extension member extending through an perpendicular opening in the balusters preventing the same from rotating about their vertical axis. Sapinski discloses a railing system with post upper and lower rails and balusters. The same includes an extension member 44 to position balusters 21 in predetermined locations. Laird et al discloses vertical members with openings perpendicular to the longitudinal axis of the post. The same includes cross members extending through the openings in the post. The openings are located at the upper end of the post. The openings include parallel side edges a parallel upper and lower edges. Laird et al discloses an alternative means to secure fence parts together. The cross sectional dimensions of the extension member member corresponds to the dimensions of the opening to enable the extension member to enter the openings of the balusters only when the balusters are aligned. One side of each opening is parallel with the longitudinal axis of the baluster. The shape of the openings and the cross sectional dimension of the extension members have been considered a matter of choice. One of ordinary skill in the art would have appreciated making them of any size or shape enabling the desired structure and intended function of the railing system.

In view of all of the above, it would have been obvious to modify either base reference to include the cross members and to secure the two together as taught by laird et al in order to strengthen the assembly. The location of the opening has been

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considered a matter of choice. One of ordinary skill in the art would have appreciated placing them in a location that would most likely strengthen the entire structure in the best possible way.

The combination of materials have been considered a matter of choice. One of ordinary skill in the art would have appreciated the known materials available in the art and would have selected any which enable the system to function as intended. It is obvious one would desire a softer material on the rail were the hand grasp and a harder material for the baluster for the strength of the system.

***Allowable Subject Matter***

Claim 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jec

  
Jeanette Chapman  
Primary Examiner